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W.C., Appellant)	
)	
and)	Docket No. 15-424
)	Issued: April 29, 2015
DEPARTMENT OF THE ARMY, ANNISTON)	
ARMY DEPOT, Anniston, AL, Employer)	
)	

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

On December 16, 2014 appellant, through counsel, filed a timely appeal of a November 3, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

The issue is whether appellant has met his burden of proof to establish total disability from September 25 through December 31, 2012 and from January 14 through 24, 2013 due to his accepted lumbar strain.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 21, 2011 appellant, then a 42-year-old welder, filed a traumatic injury claim alleging that on December 22, 2010 he sprained or pulled a muscle in his lower back standing up from the break room table. He sought treatment on January 18, 2011 and Dr. Morton S. Rickless, an orthopedic surgeon, noted that appellant had an injury to his back in 2007 which was work related. Appellant underwent a magnetic resonance imaging (MRI) scan on January 18, 2011 which demonstrated an L2-3 central annular tear with a broad-based disc protrusion and L4-5 disc osteophyte complex. On April 18, 2011 OWCP accepted his claim for lumbar sprain. It authorized leave buyback intermittently from February 14 through May 9, 2011 for 117.5 hours. Appellant returned to light-duty work on April 26, 2011 with restrictions. OWCP paid compensation benefits from October 20 through November 15, 2011.

On November 16, 2011 Dr. Thomas A. Wilson, Jr., a Board-certified neurosurgeon, diagnosed lumbar disc degeneration. On April 18, 2012 he reported that appellant experienced a lumbar strain in the area of preexisting lumbar degenerative disease. Dr. Wilson reported that appellant could continue to work with a 20-pound lifting restriction and limited bending and stooping. Appellant underwent a functional capacity evaluation on July 6, 2012 which demonstrated that appellant could work at the medium level lifting up to 50 pounds occasionally and 25 pounds frequently. Dr. Wilson reviewed this evaluation on July 11, 2012 and opined that appellant could return to work with the limitations set forth within his functional capacity evaluation.

The record indicates that appellant has a service-related condition of post-traumatic stress disorder. In a letter dated June 14, 2012, the Department of Veterans Affairs noted that appellant had 30 percent service-related disability.

In a note dated September 19, 2012, Dr. Wilson noted that appellant reported increased back pain with pain extending into his right hip and posterior thigh. He found moderate right lumbar tenderness and slightly antalgic gait. Dr. Wilson noted, "This patient is experiencing an exacerbation of his underlying degenerative disc disease." He recommended an epidural block and instructed that appellant could continue working under restrictions.

In a letter dated October 15, 2012, OWCP requested that Dr. Wilson address the causal relationship between appellant's current condition and his accepted employment injury.

Dr. Wilson completed a note on December 21, 2012 and wrote that appellant reported increased pain and had received epidural blocks, most recently in September 2012. He found diffuse lumbar tenderness and decreased range of motion of the lumbar spine with an antalgic gait. Dr. Wilson diagnosed chronic back pain with recent exacerbation secondary to lumbar degenerative disease. He indicated that appellant was temporally totally disabled through December 31, 2012. Appellant underwent an MRI scan commencing January 7, 2013 which suggested an annular tear at L4-5 and no definite acute disc protrusion or significant central or foraminal stenosis. In a note dated January 10, 2013, Dr. Wilson released appellant to return to work with his previous restrictions on January 24, 2013. In his treatment note dated January 10, 2013, he reviewed appellant's MRI scan and found degenerative changes at L2-3 and L4-5. Dr. Wilson noted that there was no significant disc herniation or nerve root encroachment. He

opined that appellant was totally disabled for two weeks and could then return to light-duty work under his previous restrictions.

Appellant filed claims for compensation requesting wage-loss compensation from September 25 through December 31, 2012 and from January 14 through 24, 2013.

Appellant underwent an electromyogram (EMG) and nerve conduction velocity test on February 14, 2013 which revealed normal functional strength and reflexes in the bilateral lower extremities. He exhibited mild alteration in sensation along the proximal posterior lateral thighs. Appellant had no electrodiagnostic evidence of acute radiculopathy, significant generalized neuropathy, compression neuropathy, or myopathy.

In a letter dated March 22, 2013, OWCP requested additional medical evidence in support of appellant's claim. It allowed 30 days for a response. Appellant sought treatment at the emergency room on May 3, 2013 due to lower back pain radiating down his right leg. He received a diagnosis of back pain. Dr. Wilson completed an undated note responding to OWCP's request for information and reported that appellant continued to experience back and leg pain secondary to lumbar degenerative disease, that his work injury aggravated his underlying degenerative condition, that appellant could work with restrictions consistent with his functional capacity evaluation and that appellant might require further medical treatment for his condition.

By decision dated July 2, 2013, OWCP denied appellant's claim for compensation for the periods September 25 to December 31, 2012 and from January 14 through 24, 2013 as the medical evidence did not establish that his diagnosed condition of degenerative disc disease was related to his employment injury. Counsel requested an oral hearing before an OWCP hearing representative on July 23, 2013.

Dr. Hugh G. Maddox, a Board-certified anesthesiologist, provided a note dated July 30, 2013 and listed appellant's date of injury as December 22, 2010. He reported that appellant had been working light duty. Dr. Maddox diagnosed degenerative disc disease of the lumbar spine with suspected annular tear and facet joint arthropathy of the lumbar spine.

The employing establishment offered appellant a permanent light-duty position as a general clerk on September 19, 2013. It stated that this position would accommodate appellant's restrictions. Appellant accepted this position on September 30, 2013.

Dr. Maddox administered a transformational epidural at S1 bilaterally on September 20, 2013. On November 5, 2013 he examined appellant and opined that appellant had an annular tear. He diagnosed degenerative disc disease of the lumbar spine, suspected annular tears with axial pain, facet joint arthropathy of the lumbar spine, and nonemployment-related post-traumatic stress disorder.

Appellant testified at the oral hearing before an OWCP hearing representative on December 23, 2013. He stated that he had a similar work-related injury in 2007. Appellant stated in September 2012 his lower back injury was aggravated to the point that he was unable to move about, get out of bed, or work. He stated that he briefly returned to work in January 2013 and stopped work on January 14, 2013 because his condition deteriorated.

Dr. Wilson completed a note on December 23, 2013 and opined that appellant's diagnosis was preexisting lumbar disc degeneration which was aggravated by his work injury. He stated, "This does not represent a significant structural problem."

Appellant filed additional claims for additional periods of compensation.

By decision dated February 4, 2014, OWCP denied appellant's additional claims for compensation for the periods November 4 to 14, and November 18 to 28, 2013. In a decision dated February 28, 2014, it denied his additional claims for compensation for the periods September 27 to October 17, and October 21 to 31, 2013.²

An OWCP hearing representative issued a decision on March 14, 2014 regarding the periods of disability claimed from September 25 through December 31, 2012 and January 14 through 24, 2013. He found the appellant had not submitted the necessary medical opinion evidence to establish disability for the periods claimed due to his accepted employment injury.

In a letter dated May 22, 2014, counsel requested that OWCP expand appellant's claim to accept the additional condition of aggravation of preexisting lumbar disc degeneration. He resubmitted the note from Dr. Wilson dated December 23, 2013 and the January 7, 2013 MRI scan.

Counsel requested reconsideration on October 15, 2014 and stated that he was submitting a document from the employing establishment dated February 4, 2014 in support of this request. The February 4, 2014 memorandum stated that appellant had not responded to requests for information regarding his ability to safely and efficiently perform the duties of his position of welder or the offered position of general clerk. The employing establishment stated that appellant could use leave-without-pay through February 14, 2014 at which point he would be considered absent without leave if he did not provide requested medical information or return to duty on February 18, 2014.

By decision dated November 3, 2014, OWCP denied modification of its prior decision finding that appellant had not met his burden of proof to establish disability from September 25 through December 31, 2012 and from January 14 through 24, 2013.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was

² As the February 4 and 28, 2014 decisions were issued more than 180 days prior to December 16, 2014 the date of appellant's appeal to the Board, these decisions are not properly before the Board on appeal. See 20 C.F.R. § 501.3(e).

³ 5 U.S.C. §§ 8101-8193.

⁴ *G.T.*, 59 ECAB 447 (2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁵

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.⁶ Findings on examination are generally needed to support a physician's opinion that an employee is disabled for work. When a physician's statements regarding an employee's ability to work consist only of repetition of the employee's complaints that he hurts too much to work, without objective findings of disability being shown, the physician has not presented a medical opinion on the issue of disability or a basis for payment of compensation.⁷ The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.⁸

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.⁹ Rationalized medical evidence is medical evidence which includes a physician's detailed medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical reasoning explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰ Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹¹

ANALYSIS

OWCP accepted that appellant sustained a lumbar strain on April 18, 2011. The factual and medical evidence establishes that appellant had a preexisting back injury from 2007 and that he has an underlying lumbar degenerative disease. Appellant returned to light-duty work and then claimed periods of total disability September 25 through December 31, 2012 and from January 14 through 24, 2013. OWCP denied this claim by decision dated July 2, 2013. An

⁵ 20 C.F.R. § 10.5(f); *see, e.g., Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury but no loss of wage-earning capacity).

⁶ *See Fereidoon Kharabi*, 52 ECAB 291 (2001).

⁷ *Id.*

⁸ *Id.*

⁹ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

OWCP hearing representative affirmed the denial on March 14, 2014. Appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence that he was disabled for work for the claimed period due to his accepted injury.¹²

In support of his claim for periods of total disability, appellant submitted a series of reports from Dr. Wilson. On September 19, 2012 Dr. Wilson examined appellant due to his complaints of increased back pain with pain extending into his right hip and posterior thigh. He opined that appellant was experiencing an exacerbation of his underlying degenerative disc disease. On December 21, 2012 Dr. Wilson diagnosed chronic back pain with recent exacerbation secondary to lumbar degenerative disease. He indicated that appellant was temporarily totally disabled through December 31, 2012. In his treatment note dated January 10, 2013, Dr. Wilson reviewed appellant's MRI scan and found degenerative changes at L2-3 and L4-5. He stated that appellant was totally disabled for two weeks and could then return to light-duty work under his previous restrictions. These reports do not support that appellant's condition from September 19 to December 31, 2012 and from January 15 to 24, 2013 was due to his accepted employment injury of lumbar sprain. Dr. Wilson instead attributed appellant's condition to his underlying degenerative disc disease which has not been accepted as employment related.

Dr. Wilson completed an undated note and stated that appellant continued to experience back and leg pain secondary to lumbar degenerative disease, that his work injury aggravated his underlying degenerative condition, and that appellant could work with restrictions consistent with his functional capacity evaluation. Dr. Wilson completed a note on December 23, 2013 and stated that appellant's diagnosis was preexisting lumbar disc degeneration which was aggravated by his work injury. These reports are not sufficient to establish that appellant was totally disabled for the periods alleged. While Dr. Wilson opined that appellant's work injury aggravated his underlying condition, he did not provide any medical reasoning in support of his conclusions. He also failed to provide any specific periods of disability during which appellant's underlying condition was aggravated by his diagnosed lumbar strain. Without specific periods of disability supported by medical rationale, these reports are insufficient to meet appellant's burden of proof.

Appellant submitted emergency room notes diagnosing back pain. The Board has held that the mere diagnosis of "pain" does not constitute the basis for payment of compensation.¹³ These notes do not attribute appellant's current condition to his accepted employment injury of lumbar strain and do not support his claim for specific periods of total disability due to his accepted employment injury.

Dr. Maddox examined appellant beginning July 30, 2013 and listed appellant's date of injury as December 22, 2010. He diagnosed degenerative disc disease of the lumbar spine with suspected annual tear and facet joint arthropathy of the lumbar spine. Dr. Maddox did not opine that appellant's accepted work condition of lumbar strain caused or aggravated his underlying degenerative disc disease. He did not provide any opinion on the causal relationship between his

¹² *Alfredo Rodrique*, 47 ECAB 437 (1996); *J.S.*, Docket No. 14-1929 (issued February 23, 2015).

¹³ *Robert Broome*, 55 ECAB 339 (2004).

diagnosis and appellant's employment. Without such medical opinion evidence, Dr. Maddox's reports are insufficient to establish appellant's claim for compensation for periods of total disability.

The Board finds that appellant has not submitted the necessary medical opinion evidence to establish that his disability from September 25 through December 31, 2012 and from January 14 through 24, 2013 was due to his accepted employment injury of lumbar strain. Contrary to counsel's argument, the Board finds no error of fact or law on the part of OWCP.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he was totally disabled from September 25 through December 31, 2012 and from January 14 through 24, 2013 due to his accepted lumbar strain.

ORDER

IT IS HEREBY ORDERED THAT the November 3, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 29, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board